IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

WP(C).No. 28122 of 2005(W)

AS.230/1997 of II ADDL. DISTRICT COURT, TRIVANDRUM
OS.2863/1990 of II ADDL.M.C.,TRIVANDRUM
(IA.8492/05)
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PETITIONER:

PEER MOHAMMED, S/O. BUHARI MUSALMAN,
T.C.39/11-2, VRINDAVAN GRADEN,
CHALAI, TRIVANDRUM.

BY ADV. SRI.G.S.REGHUNATH

RESPONDENTS:
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1. IYACHU, T.C.38/2679,
NEW T.C. 38/1696, CHALAI, TRIVANDRUM.

2. ADATTIL MOOSA, T.C.38/1696,
CHALAI, TRIVANDRUM.

3. ADATTIL KUTTU, T.C.38/1696,
CHALAI, TRIVANDRUM.

BY ADV. SRI.R.S.KALKURA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) No. 28122/2005

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE JUDGMENT DATED 25/03/2004 IN A.S.NO.230/1997 OF THE DISTRICT COURT, TRIVANDRUM.

P2 : COPY OF THE AMENDMENT APPLICATION FILED ON 10/03/2004 IN A.S.NO.230/1997 BEFORE THE DISTRICT COURT, TRIVANDRUM.

P3 : COPY OF THE AMENDED PLAINT.

P4 : COPY OF the AFFIDAVIT AND PETITION FOR AMENDMENT IN O.S.2863/90 BEFORE THE MUNSIFF COURT, TRIVANDRUM.

P5 : COPY OF the ORDER DATED 08/09/2005 ON I.A.8492/05 IN O.S.2863/90 OF THE MUNSIFF COURT, TRIVANDRUM.

P6 : COPY OF THE INJUNCTION APPLICATION FILED IN O.S.2863/90 BEFORE THE MUNSIFF COURT, TRIVANDRUM.

// TRUE COPY //

PA TO JUDGE.

jg

PIUS C.KURIAKOSE, J.

W.P.(C) No. 28122 of 2005

Dated, this the 20th day of August, 2007

J U D G M E N T

The 4th plaintiff in O.S.2863/90, who is the purchaser of the property from the 2nd plaintiff, is the petitioner in this writ petition filed under Article 227 of the Constitution of India. He challenges Ext.P5 order passed by the learned Munsiff dismissing an application for amendment of a plaint, so as to incorporate a relief for injunction restraining the defendant from trespassing into the plaint C schedule property.

2. I have heard the submissions of Shri. G.S.Raghunath, learned counsel for the petitioner, and Shri.R.S.Kalkura, learned counsel for the contesting 3rd respondent. The counsel addressed me very extensively.

3. Shri.Raghunath would assail Ext.P5. According to him, the court below was not justified in observing that an earlier amendment application filed by the petitioner had been dismissed. The dismissal of the earlier amendment application was on a technical reason that the prayer is not supported by necessary averments in the affidavit, and it was curing the said defect the present application was filed by the petitioner. My attention was

drawn to Ext.P1 judgment of the District Court by which the case was remanded back to the Trial Court. Shri.Raghunath submitted that the observation of the trial court that the suit was remanded only for the purpose of giving an opportunity to the plaintiff to establish the title over the plaint schedule property is wrong. Learned counsel submitted that subsequent events, which were created by the defendants, who set fire to the structure, which was sought to be removed and the attempts to trespass into the plaint C schedule property to construct subsequent structures necessitated amendment of the plaint. These subsequent events were totally ignored by the court below. The court below has not applied its mind to the facts which really attained in the case and there has been total in exercise of the jurisdiction. In support of his submissions, Shri.Raghunath, relied on various judgments of the Supreme Court and that of this Court governing exercise of power under Order VI Rule 17.

4. Resisting the above submissions, Shri.R.S.Kalkura would support the impugned order and for doing so, he relied on the judgments of the Supreme Court in **M/s.Ganesh Trading Co. Vs. Moji Ram** reported in 1978 (2) SCC 91, in **C.S.Company and**

Others Vs. **Kerala State Electricity Board**, reported in 1996 (11) SCC 680, and this Court in **Bhaskaran Nair** Vs. **Chandramathiyamma**, reported in 2006 (1) KLT 533. Shri.R.S.Kalkura also made available to me a copy of an order dated 25/08/2005 in I.A.8331/2005, passed in the earlier amendment application, so as to substantiate his case regarding the implications of the order in the earlier amendment application.

5. Having considered the rival submissions addressed and having scanned Ext.P5 order for the parameters which are applicable to the exercise of powers of amendment of pleadings under Order VI Rule 17 as explained by judicial authorities, I am of the view that, on the facts and circumstances which obtained in this case, the learned Munsiff should have allowed the amendment application by imposing reasonable conditions. The amendment application to a certain extent was necessitated on account of subsequent events for which the responsibility could not be fastened on the petitioner. Therefore, I am inclined to allow the amendment application but only on conditions.

6. The result is that Ext.P5 will stand set aside and I.A.No.8492/05 filed by the petitioner will stand allowed on

condition that the petitioner pays to the contesting respondents either directly or through advocate Shri.R.S.Kalkura a sum of Rs.3,000/- by way of cost within a period of three weeks of receiving copy of this judgment, failing which the above order will stand confirmed and the writ petition will stand dismissed. If cost is paid, and the orders setting aside Ext.P5 becomes operative, the court below will grant one opportunity to the contesting respondents for raising additional pleadings.

(PIUS C.KURIAKOSE, JUDGE)

jg